

Appl. No. 10/753,669  
Docket No. 7537CQ  
Amdt. dated December 1, 2009  
Reply to Office Action mailed on September 1, 2009  
Customer No. 27752

## REMARKS

### Claim Status

Claims 1, 3-7, 9-11, 15-41, 43-45 and 47-52 are pending in the present application. No additional claims fee is believed to be due.

Claims 2, 8, 42 and 46 are canceled herein without prejudice to Applicants' right to present the same or similar claim at another time.

Claims 12-14 were previously canceled without prejudice.

Claims 1, 9, 40 and 47 are amended. Support for the amendments is found in the Specification at page 12, lines 20-27; page 14, lines 13-17; and page 16, lines 8-22.

Claim 53 is new. Support for new Claim 53 is found in the specification at page

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

### Rejection Under 35 U.S.C. §103(a) Over Everhart et al.

Claims 1-11, 15-19, 21-25, 36-39, and 40-52 stand rejected under 35 U.S.C. §103(a) over Everhart et al. (U.S. Pat. No. 5,468,236). Without conceding the correctness of the rejection or otherwise waiving any arguments they may have, Applicants have canceled Claims 2, 8, 42 and 46. With respect to the remaining claims, Applicants respectfully request reconsideration and withdrawal of the rejection.

Under MPEP §2142, the Office bears the burden of factually supporting an asserted *prima facie* conclusion of obviousness. In determining the differences between the cited art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *See, e.g., Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1537; 218 U.S.P.Q. 871 (Fed. Cir. 1983). If the Office does not demonstrate *prima facie* unpatentability, then without more, the Applicant is entitled to the grant of the patent. *See In re Oetiker*, 977 F.2d 1443, 1445; 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992).

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To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the Office must show that all of the claim elements are taught or suggested in the prior art. *See, e.g., CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342; 68 U.S.P.Q.2d 1940 (Fed. Cir. 2003).

Independent Claims 1 and 40, as amended, each recite a disposable article to be fitted to a wearer comprising, *inter alia*, a biosensor including at least one biologically reactive bio-recognition element comprising a biologically derived material and adapted to interact selectively with one or more specific microorganisms selected from the group consisting of pathogenic bacteria, colonic bacteria, viruses, parasites and fungi. By dependency, each of the remaining claims include these elements.

As best understood by Applicants, Everhart et al. does not teach or suggest a biosensor having the characteristics recited by the independent claims. For this reason, Everhart et al. does not support a *prima facie* conclusion of obviousness of the claims.

Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. §103(a) Over Everhart et al. And Al-Sabah

Claims 28-35 stand rejected under 35 U.S.C. §103(a) over Everhart et al. (U.S. Pat. No. 5,468,236) in view of Al-Sabah (U.S. Pat. No. 5,868,723).

As submitted above, Applicants believe that Everhart et al. does not teach or suggest all elements of Applicants' independent claims. As best understood by Applicants, Al-Sabah does not teach or suggest the claims elements missing from Everhart et al. For this reason, the combination of Everhart et al. and Al-Sabah does not support a *prima facie* conclusion of obviousness of the claims.

Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection.

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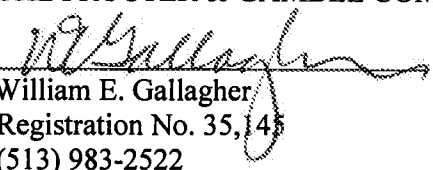
Conclusion

This response represents an earnest effort to place the present application in proper form for allowance. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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Date: December 1, 2009  
Customer No. 27752  
(Amendment-Response to Office Action.doc)  
Revised 02/09/2009